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In the Supreme Court of the United States.

OCTOBER TERM, 1923.

THE STATE OF MISSOURI AT THE RELATION OF THE BUCHANAN NATIONAL BANK OF ST. JOSEPH, PLAINTIFF IN ERROR,

v.

A. B. DUNCAN, JUDGE OF THE PROBATE COURT OF BUCHANAN COUNTY, MISSOURI.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE.

WASHINGTON: GOVERNMENT PRINTING OFFICE (1924)

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In the Supreme Court of the United States.

OCTOBER TERM, 1923.

THE STATE OF MISSOURI AT THE Relation of the Burnes National Bank of St. Joseph, plaintiff in error,
v.
A. B. DUNCAN, JUDGE OF THE PROBATE Court of Buchanan County, Missouri.
No. 762.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

BRIEF FOR THE UNITED STATES.

By permission of the Court, this brief is filed by the United States as *amicus curiae*.

Its interest in the litigation is obvious. The case not only affects the true construction of an important Federal statute, but involves the integrity of the national banking system. Congress granted to national banks the right to exercise trust powers in order to enable them to meet the competition of State banks and trust companies which have such powers. If this decision is not reversed, national banks in Missouri will be disqualified from transacting trust business and will find it increasingly difficult, and in some instances impossible, to survive the competition of State banking institutions.

STATEMENT OF FACTS.

Relator is a national banking association and has its place of business in St. Joseph, Missouri. Acting under the provisions of Section 11(k) of the Act of Congress approved December 23, 1913, known as the Federal Reserve Act (38 Stat., 251, Chap. 6), relator received from the Federal Reserve Board authority to act as trustee, executor, administrator, and registrar of stocks and bonds in so far as the exercise of such powers was not in contravention of State or local law. (Record p. 2.) Thereafter relator was designated as executor under a certain will which was duly admitted to probate in the Probate Court of Buchanan County (Record p. 1); but defendant in error, Judge of said Probate Court, refused to appoint relator as executor on the sole ground "that under the Laws of the State of Missouri National Banks are not authorized or empowered to act as Executors" (Record pp. 4, 5).

The order entered by defendant in error purported to disqualify all national banks in Missouri from acting in fiduciary capacities, and because of the broad scope of this decision and its general application to all national banks in the State a number of other national banks obtained leave to file a brief and participate as *amici curiae* in the argument upon the proceeding before the Supreme Court of Missouri. The decision of that court is to the effect that the exercise of trust powers by national banks in Missouri is in contravention of State law.

THE STATUTE.

Section 11(k) of the Federal Reserve Act (Act of December 23, 1913; 38 Stat. 251, Chap. 6) as amended by the Act of September 26, 1918; 40 Stat. 967, Chap. 177, reads in part as follows:

> The Federal Reserve Board shall be authorized and empowered:
>
> * * * * *
>
> (k) To grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located.
>
> Whenever the laws of such State authorize or permit the exercise of any or all of the foregoing powers by State banks, trust companies, or other corporations which compete with national banks, the granting to and the exercise of such powers by national banks shall not be deemed to be in contravention of State or local law within the meaning of this Act.

ARGUMENT.

I.

Congressional action, within the scope of its constitutional authority, is the supreme law of the land and is necessarily paramount to State action.

The scope of Congressional authority over the operation of national banks is aptly set forth in *Davis* v. *Elmira Savings Bank*, 161 U. S. 275. That case involved a conflict between the law of New York as to the administration of the affairs of an insolvent national bank and the laws of the United States on the same subject. The Court held that the Federal law was supreme. Mr. Justice White said (p. 283):

> National banks are instrumentalities of the Federal Government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt by a State to define their duties or control the conduct of their affairs is absolutely void, wherever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation or impairs the efficiency of these agencies of the Federal Government to discharge the duties, for the performance of which they were created. These principles are axiomatic, and are sanctioned by the repeated adjudications of this court.

A very recent and enlightening exposition of the conflict between Federal and State authority when exerted with respect to national banks is contained

in *First National Bank in St. Louis* v. *Missouri*, —— U. S. ——, 44 Sup. Ct. 213, decided January 28, 1924. In this case Mr. Justice Sutherland said:

> National banks are brought into existence under Federal legislation, are instrumentalities of the Federal Government, and are necessarily subject to the paramount authority of the United States. Nevertheless, national banks are subject to the laws of a State in respect of their affairs, unless such laws interfere with the purposes of their creation, tend to impair or destroy their efficiency as Federal agencies, or *conflict with the paramount law of the United States*. *National Bank* v. *Commonwealth*, 9 Wall. 353, 362; *Davis* v. *Elmira Savings Bank*, 161 U. S. 275, 283. These two cases are cited and followed in the later case of *McClellan* v. *Chipman*, 164 U. S. 347, 357, and the principle which they establish is said to contain a rule and an exception, "the rule being the operation of general State laws upon the dealings and contracts of national banks; the exception being the cessation of the operation of such laws whenever they expressly conflict with the laws of the United States or frustrate the purpose for which the national banks were created, or impair their efficiency to discharge the duties imposed upon them by the law of the United States." (Italics ours.)

The Court found that the Missouri statute in that case which prohibited the establishment of branch banks fell within the rule, *because national banks had no authority under Federal law to establish branches*, and consequently the Missouri statute did not con-

flict with the laws of the United States. In the present case, however, Congress has expressly granted national banks the right to exercise trust powers, and any State action which attempts to deny that right must necessarily "conflict with the paramount law of the United States" and thus fall within the exception laid down in *McClellan* v. *Chipman*, 164 U. S. 347.

II.

Section 11 (k) of the Federal Reserve Act which granted to national banks the right to exercise trust powers comes within the constitutional authority of Congress.

This precise point was definitely decided by this Court in the case of *First National Bank* v. *Fellows*, 244 U. S. 416. The Supreme Court of Michigan, from which the case was appealed, had held that the exercise of trust powers by national banks in Michigan was not in contravention of State law, but that the Act of Congress which granted national banks this right was unconstitutional. In this Court, therefore, the issue was squarely raised whether Section 11 (k) of the Federal Reserve Act was unconstitutional. This Court, in a decision which was unanimous upon this question of power, held that it was constitutional and reversed the decision of the Supreme Court of Michigan. (The dissent had reference to the right of the State to raise the question by *quo warranto*.)

In the *Fellows case* the chief contention against the constitutionality of the Act of Congress in question was that the exercise of trust powers had no reasonable relation to the operation of national

banks, but was a matter peculiarly and exclusively within the jurisdiction of the States, and that consequently Congressional legislation on this subject was an invasion of the sovereignty of the States. It is apparent that much the same thought was in the mind of the Supreme Court of Missouri when it held that the exercise of trust powers by national banks was in contravention of the law of Missouri.

This Court, however, found no merit in such contention. It found that the exercise of trust powers was so far necessary to the successful operation of national banks that Congress had granted them this right in order to enable them to meet the competition of State banking institutions. Upon this point Chief Justice White says (page 425):

> And the far-reaching effect of this error becomes manifest when it is borne in mind that plainly the particular functions enumerated in the statute were conferred upon national banks because of the fact that they were enjoyed as a result of state legislation by state corporations, rivals in a greater or less degree of national banks.

Having thus determined that the exercise of trust powers was reasonably incidental to the operation of a national bank, the Court considered whether such function was so inherently a matter of State control as to place it outside the sphere of Congressional action, and it held conclusively that, while the States had in a *general* sense a measure of regulatory power over trust business, they could not

deny to national banks the right to transact such business, particularly when State institutions which are actual or potential competitors of national banks are permitted to act in fiduciary capacities. The Chief Justice discussed this point as follows (p. 425):

> What those cases (*McCulloch* v. *Maryland* and *Osborn* v. *Bank*) established was that although a business was of a private nature and subject to State regulation, if it was of such a character as to cause it to be incidental to the successful discharge by a bank chartered by Congress of its public functions, it was competent for Congress to give the bank the power to exercise such private business in cooperation with or as part of its public authority. Manifestly this excluded the power of the State in such case, although it might possess in a general sense authority to regulate such business, to use that authority to prohibit such business from being united by Congress with the banking function, since to do so would be but the exertion of State authority to prohibit Congress from exerting a power which under the Constitution it had a right to exercise. From this it must also follow that even although a business be of such a character that it is not inherently considered susceptible of being included by Congress in the powers conferred on national banks, that rule would cease to apply if by State law State banking corporations, trust companies, or others which by reason of their business are rivals or quasi rivals of national banks are permitted to carry on such business. *This must be, since the State*

> *may not by legislation create a condition as to a particular business which would bring about actual or potential competition with the business of national banks and at the same time deny the power of Congress to meet such created condition by legislation appropriate to avoid the injury which otherwise would be suffered by the national agency.* (Italics ours.)

As noted above, there was not in issue in the case the question whether the exercise of trust powers was in contravention of State law, the Supreme Court of Michigan having decided this question in the negative. This Court, however, considered the meaning of the phrase "when not in contravention of State law" and in effect gave it the interpretation which in substance Congress subsequently embodied in the law itself by the Act of September 26, 1918. The Court said (p. 426):

> * * * The statute authorizes the exertion of the particular functions by national banks when not in contravention of the State law, that is, where the right to perform them is expressly given by the State law, *or what is equivalent, is deducible from the State law, because that law has given the functions to State banks or corporations whose business in a greater or less degree rivals that of national banks, thus engendering from the State law itself an implication of authority in Congress to do as to national banks that which the State law has done as to other corporations.* (Italics ours.)

This principle, as embodied in the amendment to Section 11(k) of the Federal Reserve Act of September 26, 1918, reads:

> Whenever the laws of such State authorize or permit the exercise of any or all of the foregoing powers by State banks, trust companies, or other corporations which compete with national banks, the granting to and the exercise of such powers by national banks shall not be deemed to be in contravention of State or local law within the meaning of this Act.

The Court also recognized the general right of a State to control, by reasonable and nondiscriminatory regulations, the transaction of trust business by national banks within the State. It must be remembered, however, that this principle was stated prior to the time when Congress, by the Act of September 26, 1918, above referred to, promulgated its own regulations for the conduct of such business, and obviously the authority of the State to impose regulations upon a national bank's fiduciary functions was conceded only because of the absence of specific legislation by Congress prescribing how such functions should be performed, and because, consequently, there was no question of conflict between Federal and State control. This point will be discussed in more detail below.

In passing upon the procedural question involved, the Court also held that since trust powers were conferred on national banks "when not in contravention of State or local law," State courts were at least impliedly authorized by Congress to determine

whether in any case the exercise of a particular power was in contravention of the State law. This holding was strongly urged by the Supreme Court of Missouri in support of its decision (Record, p. 11), but it, too, was clearly based upon the fact that at that time Congress had not attempted to prescribe what should be considered in contravention of State law and consequently there was no impropriety in a State court passing upon this question. This will be brought out more fully in the succeeding point.

III.

Congress has prescribed that the exercise of trust powers by national banks shall not be deemed to be in contravention of State law when competing State corporations are permitted to exercise such powers and this provision is controlling upon State courts.

1. The history of the legislation demonstrates that Congress intended, by the Act of September 26, 1918, to authorize national banks to exercise trust powers in any State in which competing State corporations are permitted to exercise such powers.

A brief review of the history of this legislation will be helpful in determining the scope and effect of the grant of power to national banks contained therein. For a more complete and detailed discussion of the history of this subject see "Fiduciary Powers of National Banks," 6 Va. Law Review 301.

The functioning of corporate fiduciaries is a comparatively recent development in the administration of estates and trusts. Of latter years, however, the practice of designating trust companies and banking institutions having trust powers, as trustee,

executor, and in other fiduciary capacities, has become more general. Experience has shown that trust business of this kind is desirable business, both because of the immediate profit derived and of the contact with persons affected by the trust relationships and the consequent opportunity to get new customers and attract new business in purely banking lines. It is also a distinct advantage to banks to be able to act as trustees under corporate mortgages and as registrars of stocks and bonds, because it enables them, in a measure, to supervise the expenditures of the proceeds of the loans which they have made and otherwise to protect their interests. National banks were seriously handicapped in their competition with State banking institutions because of their inability to handle trust business, and it became evident that without trust powers national banks could not survive this competition. Congress accordingly, by Section 11(k) of the Federal Reserve Act, approved December 23, 1913, authorized and empowered the Federal Reserve Board—

> (k) to grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, or registrar of stocks and bonds under such rules and regulations as the said board may prescribe.

This was the extent of the power originally granted, and after the enactment of this provision national banks in different parts of the country obtained permits from the Federal Reserve Board to transact the

trust business thus authorized. In many cases, however, national banks encountered difficulty in exercising these powers because of the refusal of various State authorities to permit national banks to qualify or act as fiduciaries. State courts were very reluctant to permit Federal agencies to enter a field which they conceived to be exclusively within State jurisdiction, and since the law as it stood authorized national banks to exercise trust powers only when not in contravention of State law, State courts found this a convenient loophole and were quick to hold that the transaction of trust business was in contravention of State law. An example of this situation is to be found in *People* v. *Brady*, 271 Ill. 100, 110 N. E. 864, discussed at more length below.

The position of the national banks was much strengthened by the decision of this Court in the case of *First National Bank* v. *Fellows*, *supra*, which held that Section 11(k) was constitutional, but the question as to when the exercise of trust powers by national banks was in contravention of State law was not directly passed upon. This Court indicated what in its opinion was the proper interpretation of this provision, but it also held that State courts were at least impliedly authorized to determine whether the exercise of trust powers in any particular case was in contravention of State law.

(a) *The grant of power contained in the original Act was inadequate and Congress found it necessary to amend the law in order to assure national banks of the right to exercise trust powers upon a basis of substantial equality with competing State institutions.*

It thus became evident that this grant of power to national banks would be of little real value, since State courts could, and in some cases did, deny the exercise of the power on the theory that it was in contravention of State law. The various State courts, moreover, were left free to interpret this phrase, "when not in contravention of State or local law," in widely varying ways, and it was to be expected that there would be no uniformity in the exercise of trust powers by national banks in the various States. The State legislatures also sought to deny national banks the right to exercise trust powers while permitting State banks and trust companies to do so.

The *Fellows case* demonstrated that Congress has ample power to authorize national banks to exercise trust powers in any State where such powers are exercised by State banks or trust companies, even though the State law purports to exclude national banks from the field of trust business. The difficulty was that Congress had not conferred this authority upon national banks in adequate terms. This point is clearly shown in the opinion of Attorney General Gregory, dated November 26, 1917 (31 Op. Atty. Gen. 186). The question was raised whether the Federal Reserve Board had authority to grant to a national bank in New York the right to exercise trust powers. A New York statute prohibited all corporations other than trust companies organized under the laws of that State from acting in fiduciary capacities. In view of this statute the Attorney General held that it would be plainly in contravention of State law to

permit a national bank in New York to exercise trust powers. He said in part as follows (p. 188):

> I find nothing in the opinion of Mr. Chief Justice White in *First National Bank* v. *Fellows* (244 U. S. 416), which would justify, in the present matter, a different construction of the unambiguous provisions of the controlling statutes. *The language of the present Chief Justice demonstrates the power of the National Legislature to confer authority upon national banks to act as trustee, executor, and administrator, where such powers are exercised by State trust companies, even though the State law discriminates against the national agencies in this regard.* The power of Congress to determine how far national banks may be subject to State control is settled, and State regulations which conflict with the congressional enactment are invalid. (*Davis* v. *Elmira Bank*, 161 U. S. 275; *Easton* v. *Iowa*, 188 U. S. 220; *Van Reed* v. *National Bank*, 198 U. S. 554.) *But in this case Congress has not exerted its power. By Section 11(k) it has explicitly constituted the local statutory provisions as the criterion of the corporate capacity of national banks.* The New York statute, therefore, can not fairly be said to deny to national banks operating in New York a power Congress intended they should have. [Italics ours.]

By the Act of September 26, 1918 (40 Stat. 967, chap. 177), Congress remedied this difficulty. This Act amended Section 11(k) of the Federal Reserve Act so as to authorize the Federal Reserve Board—

> (k) To grant by special permit to national banks applying therefor, when not in

> contravention of State or local law, the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located.

Congress further expressly provided that—

> Whenever the laws of such State authorize or permit the exercise of any or all of the foregoing powers by State banks, trust companies, or other corporations which compete with national banks, the granting to and the exercise of such powers by national banks shall not be deemed to be in contravention of State or local law within the meaning of this Act.

There follow a number of administrative provisions regulating the manner in which national banks shall transact trust business and conferring upon them specific authority to perform various detailed acts necessary or appropriate in the conduct of trust business.

(*b*) *By this legislation Congress conclusively defined one instance where the exercise of trust powers by national banks would not be in contravention of State law.*

Thus Congress, while still making the right of national banks to exercise trust powers subject to the condition that such exercise be not in contravention

of State law, in unmistakable language laid down a criterion by which the applicability of this condition is to be determined. If, so the law reads, State banks, trust companies, or other corporations which compete with national banks are *permitted* by State law to exercise trust powers, the exercise of similar powers by national banks "*shall not be deemed to be in contravention of State or local law,*" and consequently, in such a case, the right of national banks to exercise trust powers can not be denied by State courts, whatever the State law may provide in other respects.

We may conceive of a State in which corporate fiduciaries are not recognized, and no doubt the courts of such a State would be called upon to determine whether its laws would be contravened by the exercise of trust powers by a national bank. A situation of this kind is considered in the discussion of *Appeal of Woodbury*, 78 N. H. 50; 96 Atl. 299, below. In any State, however, where banking or other corporations which compete with national banks have trust powers, the courts of that State have no authority to consider whether the exercise of such powers by national banks would be in contravention of its law. Congress itself has answered that question and the answer is decisively "No." Congress deliberately withdrew this question from the jurisdiction of State courts, because it found it necessary to the proper enjoyment by national banks of the right to exercise trust powers to base this right upon some definite standard which could be readily established, irrespective of divergent and possibly discriminatory

interpretations by State courts of various provisions of State law. Under this Act of Congress a national bank, to be entitled to the right to exercise trust powers, need show only that it has duly received permission from the Federal Reserve Board and that State banks, trust companies, or other competing corporations are permitted to exercise trust powers. In such a case the State courts are wholly without power to deny or hamper the exercise of this right, whatever be the provisions of State law.

2. The weight of authority supports the view that fiduciary powers may be exercised by national banks whenever State institutions are permitted to exercise such powers.

In *In re Mollineaux*, 179 N. Y. Supp. 90, the purchaser of an infant's real estate objected to the title because the conveyance was made by a national bank as guardian. A New York statute provided that a "suitable person" might be appointed as guardian to execute the conveyance and that any trust company might so act without giving security. The court held that the national bank had power to act as guardian. After referring to the case of *First National Bank* v. *Fellows*, *supra*, it said (p. 91):

> The United States Supreme Court has rendered futile any controversy over the powers of national banks to act as fiduciaries. That decision goes to the extent of declaring the principle that when Congress, in the exercise of its constitutional powers, has clothed national banks with authority to exercise the functions possessed by rival State corporations of a similar character the State is without power to nullify such action by Congress by

> discriminatory legislation in favor of State corporations. The State may reasonably regulate the exercise of the powers so conferred but may not prohibit. * * * *Hence we see that Congress by appropriate legislation has vested national banks with power to act in enumerated trust capacities, and under the cited decision of the United States Supreme Court such legislation became the controlling and paramount law superior to any inconsistent State legislation.* In my judgment the State no longer has power to prohibit the exercise within its domain of the powers and functions so conferred upon such banks, and no power to accomplish this result indirectly by discrimination in favor of local corporations and against national banks or agencies of a similar character. (Italics ours.)

Stanchfield's Estate, 171 Wis. 553; 178 N. W. 310: This case arose on petition for the appointment of a national bank as administrator c. t. a. A statute provided that "No court of this State shall appoint or name any corporation as trustee, executor, administrator, etc., unless such corporation is organized and existing under the" laws of the State. The court held that the statute was ineffective, so far as concerned national banks, in view of the controlling provisions of Section 11 (k) of the Federal Reserve Act and that the national bank should be appointed. The court quoted from the *Fellows case* and said (pp. 555–556):

> "Manifestly this [the conferring of trust powers on national banks] excluded the power

> of the State in such case, although it might possess in a general sense authority to regulate such business, to use that authority to prohibit such business from being united by Congress with the banking function, since to do so would be but the exertion of State authority to prohibit Congress from exerting a power which under the Constitution it had a right to exercise." * * * National banks within the legitimate powers conferred on them by Congress can not "be interfered with by state legislative or judicial action, except so far as the law-making power of the Government may permit." *Van Reed* v. *People's National Bank*, 198 U. S. 554.

Hamilton v. *State*, 94 Conn. 648; 110 Atl. 54: This was a petition for the appointment of a national bank as guardian of a minor child, which was denied by the Probate Court. The Supreme Court of the State held that since State banks were permitted to act as guardian, the same right must be accorded national banks. The court said (p. 651):

> The right of the State to withhold from a national bank within its borders the enjoyment of any powers conferred by Congress which are coextensive with those given to State corporations exercising the same or similar functions in their chartered activities is expressly denied. It can make no essential difference, then, whether this State discrimination takes the form of an express statutory prohibition or is to be implied from the mere absence of permissive legislation; the test to

be applied is the same in both cases. If State banks or trust companies are accorded powers in the conduct of their business that may appropriately be exercised in connection with the primary purposes of that business, neither State legislation forbidding the exercise of such powers by a national bank nor the absence of legislation expressly sanctioning its exercise of them can affect the right of Congress to confer the same powers upon national banks in the same territory or impair the bank's right to exercise them when so bestowed.

The case of *Fidelity National Bank and Trust Company of Kansas City* v. *Enright*, 264 Fed. 236, does not directly involve the question at issue, but it does generally sustain the right of national banks to exercise trust powers in Missouri. A Missouri trust company, having reorganized as a national bank, received permission to exercise trust powers and assumed the title of "Fidelity National Bank and Trust Company of Kansas City, Missouri." An act of the Missouri legislature prohibited the use of the words "Trust Company" by any corporation other than those organized under the laws of Missouri. The State Banking Commissioner refused to permit State banks and trust companies to use The Fidelity National Bank and Trust Company as a depository of their reserve funds, because of the use of the words "Trust Company" by that institution. The national bank filed a bill in equity to enjoin the defendant Banking Commissioner from such unjust dis-

crimination. The court granted the injunction, and said (p. 239):

> When the Government of the United States enters any field over which Congress is given express, or necessarily implied, jurisdiction, it appropriates that field to the fullest extent necessary to insure the complete and effective exercise of its sovereignty. The name of a national bank must be approved by the Comptroller of the Currency. It can be changed, or its use interfered with, by no other authority. We have here, then, a national bank, empowered by the laws of the United States to act in a fiduciary capacity, and bearing a name confirmed by national authority. Clearly, any act on the part of the State which impairs, hampers, embarrasses, restricts, or, in effect, wholly prevents, the discharge of its functions as a national banking institution with the incidental powers enumerated must be void, because in express conflict with the paramount laws of the United States.

In referring to the decision of the United States Supreme Court in the *Fellows case*, the court said (p. 239):

> The language and reasoning of that opinion so completely answers the contentions of the respondent in the case at bar that further elaboration is unnecessary. It surely can not be contended that if valid authority is granted to a national banking corporation to exercise certain functions, under a name which no State agency is entitled to question, the enjoyment of the legitimate powers thus con-

ferred can be indirectly limited or destroyed in the manner alleged in this bill. That such would be the necessary effect of the action of the bank commissioner can not be doubted.

In re Turner's Estate, 277 Pa. 110; 120 Atl. 701: This case involved the right of a national bank to act as guardian under the terms of a certain will. The Orphans' Court of Philadelphia County, in which the question first arose, refused to recognize the bank's right to act as guardian or to appoint it as such, on the ground that the exercise of trust powers by national banks in Pennsylvania was in contravention of the State law. The court based this conclusion upon certain conflicts between the State law relating to the administration of trusts by State banking institutions and the provisions of Section 11(k) of the Federal Reserve Act. On appeal, the Superior Court of Pennsylvania reversed the Orphans' Court and upheld in all respects the right of national banks in Pennsylvania to exercise trust powers. An appeal was then taken to the Supreme Court of Pennsylvania, which affirmed the decision of the Superior Court. The court considered the various conflicts between State and Federal laws and ruled definitely that the latter are paramount and must prevail; that Congress, in defining what should be considered "in contravention of State law," had made the right of national banks to exercise trust powers depend upon the existence of that right in competitive State institutions, and that if such State banks or trust companies are given the right to exercise trust powers

national banks must be accorded the same right, irrespective of differences in the rules governing the exercise of trust powers.

The court said in part (p. 116):

> The answer to this contention is that, *in so far as the State law is inconsistent with the Federal act, the former must yield to the latter*, even though the result may be to place upon Federal banks a benefit or burden not received or assumed by the State banks and trust companies.
>
> The definition given in the Federal Act as to what constitutes a violation of the State law takes no cognizance of the fact that certain administrative details in the regulations of Federal banks were different from those governing State institutions. The existence of these differences, however, is not sufficient to deprive a national bank of the enjoyment of its powers under the Federal law. * * * It was with knowledge of this situation and the existing differences between rules governing State and Federal banks that Congress undertook to define, by the Act of 1918, what would be considered "in contravention of State law." It will be observed the definition refers to "powers" only and not the rules governing the exercise of such powers. It is the right itself, not the rules governing the exercise of the right, to which reference is made. *Concede the existence of the right in the State banks and trust companies, and we have the same right bestowed upon national banks.* (Italics ours.).

In its opinion in the case at bar the Supreme Court of Missouri referred briefly to *In re Turner's Estate, supra*, as holding that the exercise of trust powers by national banks in Pennsylvania was not in contravention of State law "on the ground that the regulation of such fiduciary functions was in harmony with the State regulations," and that "There were no such stringent regulations as are provided in our statute." (Record, p. 19). It is apparent from a study of the *Turner case*, however, that there was a sharp conflict between the Federal and State regulations on the subject of trust business, and the Pennsylvania regulations were, if anything, more stringent than those of Missouri. The *Turner* decision was based on the fact that the Federal regulations must prevail, however greatly they conflict with the State regulations; and the decision clearly is sound.

3. Other court decisions apparently adverse to the Government's position are not controlling.

In *Appeal of Woodbury*, 78 N. H. 50; 96 Atl. 299, a national bank sought to be appointed as administrator. A State law provided:

> No trust company, loan and trust company, loan and banking company, bank or banking company, or similar corporation shall hereafter be appointed as administrator.

Thus competing State corporations were prohibited by State law from exercising this particular trust power and the national bank could not rely upon the Congressional declaration prescribing when

the exercise of such a power by national banks shall not be deemed to be in contravention of State law. The court held correctly that the exercise of trust powers by national banks was in contravention of the law of New Hampshire, but the decision does not militate against the Government's contentions in the case at bar because of the wholly different circumstances involved. As will be shown in the succeeding argument, Missouri banking institutions which compete with national banks are permitted by the law of Missouri to exercise full trust powers.

The *Woodbury case* is an example of a case where the exercise of trust powers by national banks was rightly held to be in contravention of State law.

People v. *Brady*, 271 Ill. 100; 110 N. E. 864: In this case a national bank sought a writ of mandamus to compel the State banking authorities to issue to it a license for the exercise of trust powers. The Supreme Court of Illinois denied the petition on the ground that the exercise of trust powers by national banks was in contravention of the laws of Illinois. After the decision by this Court in the *Fellows case*, the national bank again petitioned for the writ of mandamus. The Illinois Supreme Court denied the writ this time on the theory that the former proceeding was *res judicata*, but it expressly admitted that "under the decision of the Supreme Court of the United States our judgment was erroneous." Since that time the Illinois courts have not denied national banks the right to exercise trust powers.

In *Aquidneck National Bank* v. *Jennings*, 117 Atl. 743, — R. I. —, a national bank sought by mandamus to compel the State Treasurer to accept a deposit of securities required by State law as a condition precedent to the exercise of trust powers by State trust companies. The Supreme Court of Rhode Island held that it had no authority under the State law to compel a State officer to accept such securities from a national bank, and expressed the opinion that the exercise of trust powers by national banks was in contravention of the laws of Rhode Island. If this case is to be construed as denying the right of national banks to exercise trust powers in Rhode Island when trust companies in Rhode Island are permitted to exercise such powers, it is submitted that the decision is wrong because in conflict with the paramount provisions of Federal law. The decision, however, really turned on the question whether the State Treasurer could be compelled to accept a deposit of securities from a national bank, and consequently it has no real bearing on the case at bar. Furthermore, it is possible that a national bank might lawfully exercise trust powers under these circumstances without depositing securities with the State authorities.

IV.

The exercise of trust powers by national banks in Missouri is not in contravention of the laws of Missouri.

1. Missouri trust companies are authorized to exercise trust powers and do compete with national banks.

Congress having declared that the exercise of trust powers by national banks shall not be deemed to be in contravention of State law within the meaning of the Federal Reserve Act if State banking institutions which compete with national banks are permitted to exercise such powers, it is necessary to determine merely whether this hypothesis is properly applicable in the case of Missouri. The questions whether State banking institutions in Missouri are authorized by State law to exercise trust powers, and whether such institutions compete with national banks, are largely questions of fact admitting of little argument. We shall content ourselves with a brief recital of the facts upon which the answers to these questions depend.

Section 11799 of the Banking Laws of Missouri (Revision of 1919) authorizes trust companies, among other things—

> 3. To accept and execute all such trusts and perform such duties of every description as may be committed to them by any person or persons whatsoever, or any corporation, and act as assignee, receiver, trustee and depository, and to accept and execute all such trusts and perform such duties of every description as may be committed or trans-

ferred to them by order, judgment or decree of any of the courts of record of this state or other state, or of the United States.

* * * * *

9. To act as executor and trustee under last will, or as administrator with or without the will annexed, of the estate of any deceased person, or as guardian or curator of any infant, insane person, idiot or habitual drunkard, or trustee for any convict in the penitentiary, under the appointment of any court of record having jurisdiction of the person or estate of such deceased person, infant, insane person, idiot, habitual drunkard or convict.

In addition to this grant of full trust powers, trust companies are also authorized by the same statute (Sec. 11799, Missouri Banking Laws, 1919) to exercise practically unlimited banking powers. The following provisions to this effect are quoted:

1. To receive money in trust and to accumulate the same, at such rate of interest as may be obtained or agreed upon, or to allow such interest thereon as may be prescribed or agreed, and to receive money on deposit, with or without allowing interest thereon, not exceeding in any case the legal rate: *Provided, however,* that no trust company shall maintain in this state a branch trust company or receive deposits or pay checks except in its own banking house.

* * * * *

10. To discount and negotiate promissory notes, drafts, bills of exchange and other

evidences of debt; buy and sell coin and bullion, and loan money upon real estate or personal property, and upon collateral or personal security, at a rate of interest not exceeding that allowed by law; and, to execute and issue its notes and debentures payable at a future date, and to pledge its mortgages on real estate and other securities as security therefor, which debentures and notes may be issued to an amount not exceeding, in the aggregate, ten times the amount paid upon the capital stock and surplus of the company issuing the same, and shall in no case exceed the amount of first mortgages pledged to secure their payment.

11. To buy, invest in, and sell all kinds of government, state, municipal and other bonds, and all kinds of negotiable and nonnegotiable paper, stocks or other investment securities.

12. To accept for payment, at a future date, drafts drawn upon it by its customers and to issue letters of credit authorizing the holders thereof to draw drafts upon it or upon its correspondents at sight or on time not exceeding one year: *Provided*, that no trust company shall incur liabilities under this subdivision to an amount equal at any time in the aggregate to more than its paid up and unimpaired capital stock and surplus fund, except with the approval of the bank commissioner under such general regulations as to amount of acceptances as the commissioner may prescribe.

Prior to 1915 trust companies could not receive noninterest-bearing deposits, but this was the only

banking function denied them, and this limitation was removed by an Act of 1915 which amended the law to read as above quoted. (Sec. 11799, subdivision 1.) The Missouri Supreme Court itself considered the scope of the powers granted to trust companies prior to 1915, and in *Denny* v. *Jefferson County*, 272 Mo. 436; 199 S. W. 250, said: "Their powers cover practically the whole field of legitimate banking, with the exception of receiving money on deposit without the payment of interest."

Missouri trust companies are thus authorized to exercise wide trust powers and are also authorized to engage in the same banking activities which are the usual and characteristic functions of commercial banks, such as national banks. There can be no doubt that Missouri trust companies, with these wide powers, encroach upon the field of national banks and inevitably come into competition with them.

With further reference to the question of competition, relator's petition for the writ of mandamus specifically alleged that trust companies "are engaged in active competition in the general banking business with national banks and with your petitioner." (Record, p. 2.) Defendant in error, having demurred to this petition (Record, p. 7), must be taken to have admitted the truth of this allegation.

If, then, Missouri trust companies, which compete with national banks, are authorized by the laws of Missouri to exercise fiduciary powers, it must follow that the exercise of such powers by national banks is

not in contravention of the laws of Missouri within the meaning of the Federal Reserve Act.

2. The opinion of the court below failed to give effect to the controlling provisions of Federal law.

The Supreme Court of Missouri decided that the exercise of trust powers by national banks was in contravention of Missouri law. We shall not discuss in detail the reasoning which lead to this conclusion, because it is obviously based upon a misunderstanding of the effect of the Federal law. In substance, the Supreme Court of Missouri relied on its construction of the opinion in the *Fellows case* to the effect that State courts have the right to determine what is in contravention of State law. This may have been true prior to the Act of September 26, 1918, when the *Fellows case* was decided, but this Act took away from State courts all authority to pass on this question and explicitly declared that the exercise of trust powers by national banks shall not be considered in contravention of State law if State banking institutions, which compete with national banks, are authorized to exercise such powers. In such cases, the provisions of State laws and the opinions of State courts upon this question are utterly immaterial. The Supreme Court of Missouri, while conceding that Federal legislation within the scope of its constitutional authority is paramount to State action, and not questioning the constitutionality of Section 11 (k) of the Federal Reserve Act, took the curiously inconsistent position that this particular Federal law was not binding upon it.

The court proceeded to hold that in any event the Congressional pronouncement with reference to contravention of State law was not applicable in this case, because State banks were not authorized to exercise trust powers, and trust companies which were so authorized did not compete with national banks in the sense contemplated by the Federal statute. It is difficult to follow the reasoning of the court on this point, but apparently it held that trust companies do not compete with national banks, because trust companies perform fiduciary functions, and national banks, under the laws of Missouri, are not permitted to do so. The court overlooks the fact that Congress recognized the existence of competition between national banks and State banks and trust companies and gave to national banks the right to exercise trust powers for the express purpose of enabling them to meet the competition of State institutions, which are their rivals in the banking field. Obviously national banks can not compete for trust business if State courts deny them the right to engage in such business. Furthermore, the competition referred to in this statute is competition for commercial banking—not competition for trust business.

As a further ground for its conclusion that the exercise of trust powers by national banks is in contravention of the laws of Missouri, the Supreme Court of Missouri cited a number of provisions of State law imposing administrative regulations upon the performance by trust companies of their fiduciary func-

tions, and reasoned that since State courts could not impose the same restrictions upon national banks, that necessarily gave rise to contravention of State law. The court sought to derive support for this conclusion from certain language of the opinion of this Court in the *Fellows case* to the effect that regulations imposed upon national banks in their exercise of trust powers should coordinate with the State regulations, to the end that harmony and the concordant exercise of national and State power might result. Here again, however, the Missouri court failed to give effect to the amendment of September 26, 1918. Prior to that amendment Congress had not exercised its undoubted power to prescribe how national banks should administer their trust departments, and it was reasonable to hold, as this Court did in the *Fellows case*, that the exercise of trust powers by national banks should not violate the laws and regulations applicable to the conduct of trust business by State institutions, since the State regulations at that time furnished the only standard of control. When Congress, however, by the Act of September 26, 1918, established its own rules and regulations governing the exercise of trust powers by national banks, State rules and regulations were superseded to the extent that Congress had appropriated to itself this field of legislation, and the Federal regulations became the sole authority governing the exercise of trust powers by national banks. This follows from the well-established principle, which the Supreme Court

of Missouri admitted, that Federal laws within the scope of Congressional authority are paramount to State laws and that in case of conflict the Federal laws must prevail.

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